

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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to: Senior Tax Analyst
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subject: Taxation of Moving Expenses Paid to Military Personnel by Private Contractor

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether members of the uniformed services must include in gross income amounts received from LH as moving expenses.

CONCLUSION

Because the payments from LH are a substitute for partial dislocation allowances paid by the United States military and excluded from gross income under § 1.61-2(b)(2) of the Income Tax Regulations, the payments may be excluded from the gross income of the members of the uniformed service.

FACTS

A military base in State contracted with LH, a private housing contractor to assume the responsibility of providing housing for the members of the uniformed service stationed at the base. The military generally provides each soldier a monthly housing allowance (BAH) of \$V - \$W depending on the soldier's pay grade and dependency status. Under the agreement, LH agreed to accept the BAH payment directly from the government in satisfaction of the tenants' rental obligation. BAH is excluded from gross income under

§ 1.61-2(b)(1). The agreement also contains a commitment by LH to renovate a certain number of housing units. LH and each member generally execute a lease with a term of R months. In order to meet its renovation goal, LH offered to pay moving expenses of members whose leases had not expired. The payments were based on the member's pay grade and dependency status and range from \$X to \$Y. LH issued a Form 1099-MISC to each of the members for these payments.

LAW AND ANALYSIS

Section 61(a) of the Internal Revenue Code includes in gross income "all income from whatever source derived." Accordingly, a taxpayer must include in gross income all accessions to wealth unless the taxpayer can point to another section that excludes the accession. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955). Thus, the payments from LH are presumptively an item of gross income.

The regulations promulgated under section 61 of the Code, however, provide exclusions for certain payments made to military personnel. Accordingly, subsistence, uniform allowances and amounts received as commutation of quarters are excludable from gross income. § 1.61-2(b)(1). Similarly, the value of quarters or subsistence provided to such personnel is also excludable from gross income. *Id.* Such personnel may also, under § 1.61-2(b)(2), exclude from gross income a dislocation allowance authorized by 37 U.S.C. § 407.

Section 407 of Title 37 authorizes the Secretary of Defense to pay a primary dislocation allowance to a member of the uniformed services at a rate determined by the member's pay grade and dependency status. An eligible member of the uniformed services includes one who is ordered to move in connection with the closure or realignment of a military installation and, as a result, the member and/or his dependents actually move. 37 U.S.C. § 407(a)(2)(E).

Enacted in 2001, section 407(f) of Title 37 provides that a member who is ordered to vacate family housing provided by the United States to permit privatization or renovation of housing or for any other reason (other than pursuant to a permanent change of station) may be paid a partial dislocation allowance. The Secretary of Defense must adjust the rate of the partial dislocation allowance by the percentage equal to the average percentage increase in the rates of pay. In the year of payment, the partial dislocation allowance was \$Z. When a member is ordered to vacate housing provided by the United States, however, the military would provide moving services to the uniformed member the value of which would not be includable in gross income.

The payments under consideration are merely a substitute for the benefits that members of the uniformed service would have received from the United States if their housing had not been privatized and the members were ordered to vacate so that the structures could be rehabilitated. The recipients of the moving expenses from LH received no greater economic benefit than if the United States continued to provide

housing and moving expenses in connection with renovation of the occupied premises. Accordingly, we conclude that the payments in this case do not constitute an item of gross income under § 61 because they are excludable under §1.61-2(b)(2).

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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Please call (202) 622-4920 if you have any further questions.

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